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February 5, 1997

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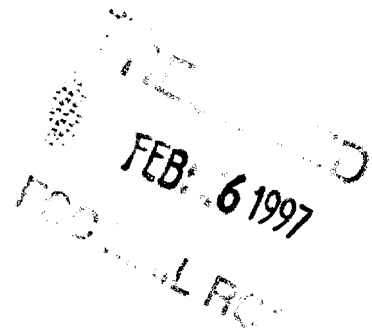

Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 97-1

Dear Sir/Madam:

Enclosed please find an original and 11 copies of The Comments of The Michigan Cable Telecommunications Association in the above-referenced matter. The Comments are also contained on the enclosed 3.5" computer diskette formatted in Word Perfect 5.1. Also enclosed is the Proof of Service.

Very truly yours,

FRASER TREBILCOCK DAVIS & FOSTER, P.C.

David E.S. Marvin

DEM/maf
Enclosures
cc: Department of Justice
ITS, Inc.
Michigan Public Service Commission

No. of Copies rec'd 0+11
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Application by Ameritech Michigan	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-1
Telecommunications Act of 1996 to	)	
Provide In-Region, InterLATA	)	
Services in Michigan	)	

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Proof of Service

Marcia A. Fogarty, being first duly sworn, deposes and says that on this 5th day of February, 1997 she served a copy of the Comments of The Michigan Cable Telecommunications Association upon the following individual(s):

Department of Justice
c/o Donald J. Russell
Telecommunications Task Force
Antitrust Division Room 8205
555 Fourth Street, N.W.
Washington, D.C. 20001

ITS, Inc.
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

by placing the same in an envelope(s) addressed to said individual(s) at the aforesaid business address(es) and sending said envelope(s) via Federal Express.

Marcia A. Fogarty

Subscribed and sworn to before me
this 5th day of February, 1997

Susan Goodman
SUSAN GOODMAN
Notary Public, [illegible] MI

FRASER TREBILCOCK DAVIS & FOSTER, P.C.
LAWYERS
LANSING, MICHIGAN
48933

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Application by Ameritech Michigan	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-1
Telecommunications Act of 1996 to	)	
Provide In-Region, InterLATA	)	
Services in Michigan	)	

COMMENTS OF THE MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION

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Date: February 5, 1997

FRASER TREBILCOCK DAVIS & FOSTER, P.C. LAWYERS LANSING, MICHIGAN 48933

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SUMMARY

Ameritech Michigan's application to enter the in-region long distance telephone market must be denied at this time. Despite the requirements set forth in Section 271(c)(2)(B), Ameritech Michigan has failed to comply with the competitive checklist. In particular, Ameritech Michigan is not allowing access to its poles at just and reasonable rates as required by Section 271(c)(2)(B)(iii). Further, Ameritech Michigan's application is premature because there is a lack of facilities-based competition which would justify approval of Ameritech Michigan's application pursuant to Track A as set forth in Section 271(c)(1)(A). In addition, Ameritech Michigan's application is premature because all of the non-accounting safeguards which are necessary to limit anticompetitive conduct have not been promulgated pursuant to Section 272. Finally, Ameritech Michigan's entry into the in-region long distance market is not in the public interest at this time because there remain other significant barriers to competitors entering Ameritech Michigan's market. For example, Michigan municipalities are discriminatorily applying to new providers telecommunications franchise ordinances which require payments of up to five percent of gross revenue, while and not imposing the same requirements on Ameritech Michigan. As a result, the FCC should reject Ameritech Michigan's application because it is not in compliance with the competitive checklist, its application is premature and its entry into the in-region long distance market is not in the public interest at this time.

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I. INTRODUCTION

On January 7, 1997, Ameritech Michigan filed an application under Section 271 of the Communications Act of 1934, as amended, (the "Federal Act") seeking to enter the in-region interLATA market. Given the expectation that other parties will make extensive filings with the FCC regarding Ameritech's application, The Michigan Cable Telecommunications Association ("MCTA")[1] will focus only on the issues critical to the Michigan cable industry as it seeks to bring facilities-based competition to the local telephone market. First, the FCC should find that Ameritech Michigan is not in compliance with the requirements of the 14-item competitive checklist because Ameritech Michigan has failed to satisfy the third item which requires access to poles, ducts, conduits and rights-of-way owned or controlled by Ameritech Michigan at just and reasonable rates. 47 USC § 271(c)(2)(B)(iii). Second, the lack of any facilities-based competitor serving residential customers prevents Ameritech Michigan's claim for relief under Track A of the Federal Act and makes Ameritech Michigan's request to be found in compliance with the checklist premature. Third, the application is premature because the FCC has not promulgated all the rules necessary to fully implement the non-accounting safeguards under Section 272 of the Federal Act which are necessary to limit anticompetitive conduct by Ameritech Michigan.

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[1]The MCTA has been long recognized by the Michigan Public Service Commission as being "well suited to [participate] in proceedings on behalf of the cable television industry in Michigan." (Order of January 29, 1985 in U-7620 at p. 3.) Cable television companies are expected to be a significant source of facilities-based competition for Ameritech Michigan. MCTA's members, such as Continental Cablevision and Comcast Corporation, have affiliates which have received licenses to provide basic local exchange services in Michigan and other MCTA members are actively preparing to enter the telecommunications market in Michigan.

Fourth, given these and other factors such as discriminatory application of telecommunications franchise ordinances by local municipalities, significant impediments still exist to the development of meaningful competition in the local telephone market. Thus, the FCC should find that Ameritech Michigan is not in compliance with the competitive checklist, that Ameritech Michigan's application is premature and that Ameritech Michigan's entry into the in-region interLATA market is contrary to the public interest at this time.

II. ACCESS TO AMERITECH MICHIGAN'S POLES AT JUST AND REASONABLE RATES IS NOT AVAILABLE IN MICHIGAN

A. Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates In Accordance With The Requirements Of Section 224

1. Under Section 224, Michigan Has Opted To Regulate Pole Rates

The Federal Act provides that the FCC will regulate the rates, terms and conditions for pole attachments unless a state certifies to the FCC that it will regulate pole attachments. (47 USC § 224(c).) The FCC has recognized that Michigan has submitted the necessary certification to regulate pole attachments. (See, Public Notice, 2 FCC RCD 7535 dated December 30, 1987; Comcast Cablevision and Continental Cablevision of Michigan, Inc v Consumers Power Company, 11 FCC RCD 5412 (June 9, 1995). As a result, Michigan law governs the pole attachment rates for Ameritech Michigan.

2. The MTA, As Amended, Adopted The Same Statutory Language For Pole Attachment Rates Which Serves As The Basis For The Application Of The "FCC Formula"

In 1995, the Michigan Legislature amended the Michigan Telecommunications Act, 1991 PA 179, as amended, being MCL 484.2101, et seq.; MSA 22.1469(101), et seq., (the

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"MTA") and adopted the specific statutory language for determining just and reasonable pole rates for cable and telecommunications providers as set forth in the Federal Pole Attachment Act of 1987. Section 361 of the MTA states:

> "(2) A provider shall establish the rates, terms and conditions for attachments by another provider or cable service.
>
> "(3) The rates, terms and conditions shall be just and reasonable. A rate shall be **just and reasonable if it assures the provider recovery of not less than the additional costs of providing the attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct or right-of-way.**" MCL 484.2361(2) and (3); MSA 22.1469(361)(2) and (3).

The Michigan Legislature essentially duplicated the language of the Federal Pole Attachment Act of 1987, which, in relevant part, states:

> "For purposes of subsection (b) of this section, a rate is **just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.**" 47 USC §224(d).

Having adopted this statutory language, the Michigan Legislature must be presumed to have had knowledge of the earlier FCC interpretations of this language and desired to have that

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interpretation applied as a matter of Michigan law.[2] See, Scholten v Rhoades, 67 Mich App 736; 242 NW2d 509 (1976); Beading v Governor of Michigan, 106 Mich App 530; 308 NW2d 269 (1981).

3. *Based On 1995 Data, The Maximum Pole Attachment Rate For Ameritech Michigan Under The MTA Is $1.20 Per Pole Per Year*

The methodology adopted by the Michigan Legislature is highly refined and is based on quantifiable and publicly reported costs. The FCC has precisely identified the particular accounts from a providers' FCC annual reports to be utilized in determining the maximum pole rate for that provider. (See, Amended Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCCR 4387, 4402-4404 (1987), and letter from Chief of Accounting and Audit Division, Common Carrier Bureau, FCC to Paul Glist, 5 FCCR 3898 (1990).) As a result, the calculation of the maximum pole attachment rate for Ameritech Michigan is straightforward and based on its publicly reported costs.

Using Ameritech Michigan's 1995 ARMIS data filed with the FCC, the maximum pole rate for Ameritech Michigan under the methodology imposed by the MTA is $1.20 per pole/per year. (The workpapers supporting this straightforward calculation are attached as Exhibit 1.) The 1995 ARMIS data produces a slightly lower rate than Ameritech Michigan's

[2]After the passage of Section 361 of the MTA, the Federal Act was amended. One of the amendments to the Federal Act was to phase-in a new methodology for utilities to determine pole attachment rates for telecommunications providers. See, 47 USC § 224(e). This amendment to the Federal Act, however, left unchanged the methodology to determine pole rates for cable providers which is set forth at 47 USC § 224(d). It is the language from 47 USC § 224(d) which was adopted by the Michigan Legislature to be applied to both cable and telecommunications providers. Therefore, the recent amendment to the Federal Act is of no consequence to determining pole rates in Michigan.

1993 ARMIS data which supported a rate of $1.28 per pole/per year. (See, Exhibit I-45b from MPSC Case Nos. U-10741, U-10826 & U-10831, attached here as Exhibit 2.) The principal reason for the reduction is the decrease in the net investment per bare pole due to the depreciation reserve for poles.

4. Ameritech Michigan Has Filed Two Different Tariffs Which Exceed The Maximum Rate Allowed under The MTA

On or about May 30, 1996 (prior to the filing of Ameritech's most recent tariff), Ameritech Michigan submitted a pole attachment tariff to the MPSC which stated that its pole rate was $2.88 per pole/per year. MCTA, realizing that this pole rate was excessive, contacted Ameritech Michigan in an effort to cooperatively resolve any issues regarding the proper calculation of Ameritech Michigan's pole rates under the MTA. As a result of these contacts, Ameritech Michigan did allow MCTA to review its workpapers under a confidentiality agreement. In response, MCTA alerted Ameritech Michigan to the errors contained in Ameritech Michigan's calculations and provided Ameritech with the proper worksheets showing the correct calculation based on the information submitted by Ameritech.

Shortly thereafter, the MPSC sent a letter to Ameritech, expressly declining to accept for filing Ameritech Michigan's tariff establishing the $2.88 rate. (See, Exhibit 3.) Rather than contest this rejection, Ameritech Michigan withdrew its tariff. (See, Exhibit 4.)

In September of 1996, Ameritech Michigan submitted a new tariff to the MPSC with a pole attachment rate of $1.97. Ameritech failed to provide any justification of any kind to support this new rate or to explain why Ameritech should be allowed to charge a rate which exceeds the maximum level allowed under the MTA.

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5. *Ameritech Michigan Has "Stonewalled" MCTA's Efforts To Resolve Issues Regarding The Proper Calculation Of Pole Rates Under The MTA*

In October of 1996, MCTA's counsel verbally, and then in writing, contacted counsel for Ameritech Michigan seeking an explanation as to the manner in which the $1.97 rate was calculated. No response was received from Ameritech Michigan regarding this letter. Therefore, on November 21, 1996, MCTA's counsel again wrote to Ameritech Michigan requesting information as to its new proposed pole attachment rate of $1.97. Again, no response was received from Ameritech Michigan regarding this letter.

After Ameritech's December 16, 1996 filing in MPSC Case No. U-11104 which is the Michigan docket established to review compliance with the competitive checklist, Ameritech Michigan's Assistant General Counsel, John T. Lenahan, sent a letter to all parties inquiring whether there were any issues which could be resolved by the parties to narrow the disputes in this case. As a result of this letter, MCTA's counsel once again reminded Ameritech Michigan of its failure to provide any information or justification regarding the manner in which it calculated the $1.97 pole rate. Despite these repeated requests over several months, it was not until January of 1997 that Ameritech finally provided MCTA's counsel with a two-page workpaper showing how Ameritech calculated its $1.97 pole rate. Interestingly, it appears that the workpaper was available to Ameritech much earlier, since it was dated September 26, 1996. Moreover, as explained in the following section, Ameritech's calculation was totally flawed.

6. *Ameritech's Most Recent Pole Attachment Rate Of $1.97 Is Unsupported By Any Evidence And Unlawful*

The workpaper belatedly supplied by Ameritech Michigan to MCTA but never made part of the record before the MPSC does not support Ameritech Michigan's $1.97 pole rate. For example, in calculating the maintenance costs of its poles, Ameritech Michigan erroneously included the pole rents which Ameritech paid to other utilities for attachments on poles owned by those other utilities! Obviously, those costs are totally irrelevant to the proper calculation of the rate which Ameritech Michigan should charge for attachments to its own poles. This is clearly inconsistent with the FCC methodology adopted in Section 361 of the MTA. (See, Letter from Kenneth Moran, FCC Common Carrier Bureau Accounting & Audits to Paul Glist, June 22, 1990, 5 FCC Rcd 3898 (1990); UACC Midwest, Inc. d/b/a United Artists Cable Mississippi Gulf Coast v South Central Bell Telephone Company, PA 91-0005 through PA 91-0009, DA 95-1363 (Common Carrier Bureau) (June 15, 1995).) Given the unambiguous manner in which the Michigan Legislature adopted the FCC formula and its straightforward application to Ameritech Michigan's actual costs as reported in its 1995 ARMIS filing, there is simply no legal basis for Ameritech's pole attachment rate.

7. *Ameritech Michigan Continues To Attempt To Collect An Unlawful Pole Rate And Is Dunning Cable Companies Based On A Tariff Rejected By The MPSC And Withdrawn By Ameritech Michigan*

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Both cable service providers and telecommunications providers under the MTA are subject to the same pole attachment rate. MCL 484.2361(2); MSA 22.1469(316)(2). If American Michigan is billing telecommunications providers in the same manner as cable companies, the FCC should be seriously alarmed because cable companies are receiving bills

and are being dunned by Ameritech Michigan based on a pole rate of $2.88. Without any justification whatsoever, Ameritech Michigan is attempting to impose rates based on an ineffective tariff which the MPSC rejected and Ameritech Michigan itself withdrew. Moreover, Ameritech Michigan's new (but still unlawful) rate of $1.97 is a tacit admission that the $2.88 rate is excessive. Yet, Ameritech Michigan continues to send dunning notices seeking to collect the $2.88 pole rate for 1996. (See, Exhibit 5.) Clearly, Ameritech Michigan is not applying a just and reasonable rate for pole attachments in its service territory.

8. Conclusion: Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates

Michigan has certified to the FCC that it regulates pole attachment rates. Section 361 of the MTA expressly defines a "just and reasonable" rate and Ameritech's rate fails to meet this definition. As set forth in Section 361 of the MTA, the Michigan Legislature has adopted the FCC methodology for determining the maximum allowable pole rate. That methodology is straightforward, based on publicly available data and allows Ameritech Michigan to charge a rate no greater than $1.20 per pole/per year. Yet, Ameritech Michigan is seeking to impose a $1.97 rate and in fact is continuing to attempt to collect a rate of $2.88, based on an ineffective tariff which the MPSC rejected and Ameritech itself withdrew. As a result, Ameritech Michigan is not providing access to its poles at just and reasonable rates and, therefore, is not in compliance with the competitive checklist.

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B. Ameritech Michigan Is Discriminating By Giving Preferential Treatment To Its Affiliate Ameritech NewMedia

1. Initially When Cable Companies Attached To Ameritech Poles, Ameritech Required Them To Abide By The National Electric Safety Code And Incur Substantial "Make Ready" Charges

As required by rules promulgated by the Michigan Public Service Commission, when cable companies sought to attach to Ameritech Michigan's poles, the cable companies were required to abide by the National Electric Safety Code. (See, 1988 AC, R 460.811, et seq.) As a result, cable companies were generally required to attach their cable at a distance of 18 feet above ground clearance. This often required cable companies to move the existing attachments of others to a higher level on Ameritech Michigan's poles. As a result, cable companies incurred millions of dollars of "make-ready" charges in initially attaching their cable to Ameritech Michigan poles. In addition, cable companies were not allowed to attach at the much preferred bottom position on the pole. Instead, this position was reserved for telephone service, while cable companies were required to attach above telephone cable.

2. When Ameritech NewMedia Sought To Initially Attach To Ameritech's Poles, Ameritech Adopted A New And Invalid Interpretation Of The National Electric Safety Code, Thus Enabling Its Affiliate To Avoid The Expense Of "Make Ready" Charges Which Have Been Imposed On NewMedia's Competitors

When Ameritech's cable television affiliate, Ameritech NewMedia, initially sought to attach its cable to Ameritech Michigan's poles, Michigan rules still required compliance with the National Electric Safety Code. Yet, when Ameritech NewMedia sought to attach, Ameritech Michigan applied a new, and invalid, interpretation of the National Electric Safety Code which allowed Ameritech NewMedia to attach at 15-1/2 feet. This allowed Ameritech

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NewMedia to attach below all the other parties on Ameritech Michigan poles to avoid the expensive "make-ready charges" which had been imposed on all other cable companies. Thus, Ameritech NewMedia has been allowed access to the preferred bottom position on the pole which had been earlier denied to other cable providers.[3]

As a result, Ameritech Michigan is providing discriminatory access to its poles because it is giving preferential treatment through an invalid interpretation of the National Electric Safety Code which allows its affiliate Ameritech NewMedia to attach at 15-1/2 feet and avoid substantial "make-ready" charges which have been imposed on other attaching parties. This is another example of the discriminatory access to Ameritech Michigan's poles which establishes that Ameritech Michigan is not in compliance with the competitive checklist.

III. AMERITECH MICHIGAN'S REQUEST FOR INTERLATA RELIEF IS PREMATURE BECAUSE THERE IS NO FACILITIES-BASED COMPETITION FOR RESIDENTIAL CUSTOMERS

A. Track A Requires Facilities-Based Competition

In its filing with the FCC, Ameritech Michigan claims it has satisfied the requirement to provide in-region interLATA services because it has entered into interconnection agreements with competitors and satisfied Section 271(c)(1)(A), or Track A, of the Federal Act. Track A requires the presence of facilities-based competition and requires Ameritech Michigan to show that it has entered into one or more binding agreements approved under

[3]As a result of similar activity by Ameritech in Ohio, a complaint has been filed by the Ohio Cable Telecommunications Association and others against Ameritech before the Ohio PUC, in Case No. 96-1027-TP-CSS.

the Federal Act under which Ameritech Michigan is providing access and interconnection to its network facilities to unaffiliated competitors providing service to both residential and business customers. Further, these competing providers must be providing such services either exclusively over their own facilities or predominately over their own facilities. Section 271(c)(1)(A), in relevant part, provides:

> "A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company ***is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers.*** For the purpose of this subparagraph, ***such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities*** . . . (47 USC § 271(c)(1)(A); emphasis added.)

Thus, to be entitled to interLATA relief under Track A, Ameritech Michigan must show that there is facilities-based competition for both residential and business customers.

B. The MPSC Recognizes That There Is No, Or Virtually No, Competition, Either Facilities-Based Or Not

While the State of Michigan has attempted to deregulate the local exchange telephone market, the MPSC has recognized that deregulation does not equal competition. As explained by Chairman Strand:

> "The one thing I do know is that deregulation is not necessarily the same thing as competition and the Commission believes that basically both must go hand in hand.

> A good analysis is one of the telephone industry. The telephone industry to a large extent over the last four or five or six years has been substantially deregulated; ... The only real competitive market is in the long distance interstate market and that basically only has three main players and a lot of small ones. Yet, rates in that area have declined by approximately 60 to 70 percent over the last 15 years.
>
> Conversely, we have deregulated to a large extent in the intrastate area, but in most cases most people still only have one choice. I can tell you the stories we have heard time and time and time again of people who have said my local phone bill is muddled. We have had our rates raised locally or stayed the same locally; yet, basically decline overall on an interstate long distance basis. The result is it's cheaper in many cases to call California than it is five miles down the road." (August 6, 1996 Comments made during a Public Hearing in MPSC Case No. U-11076).

Further, in approving the application of Ameritech Communications, Inc. to provide local exchange service in MPSC Case No. U-11053, this MPSC stated:

> "In reaching its decision, the Commission places emphasis on the differences between the current levels of competition in the local exchange and long distance markets. ***There is virtually no competition in local exchange markets at this time.*** However, competition does exist in the interLATA market." (August 28, 1996 Order, p 28.)

The MPSC has recognized there is no, or virtually no, competition in the local telephone market, let alone a facilities-based competitor for both residential and business subscribers.

C. Ameritech Michigan Has Not Shown The Existence of Facilities-Based Competition For Residential Customers

In its filing with the MPSC, Ameritech Michigan did not establish that there is a single residential customer receiving local exchange service through a local loop owned and deployed by a competing provider. Yet, it is the local loops which are the predominant

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physical plant (i.e., facilities) comprising a local telephone system. Apparently, Ameritech Michigan contends that a competing provider is providing service over its own facilities to residential customers because one competing provider is purchasing unbundled loops from Ameritech Michigan and using those unbundled loops to serve a few residential customers. Such a contention ignores the fact that Congress sought to promote "meaningful facilities-based competition"[4] which cannot come about if service to all customers is being provided over a single set of network facilities. A definition of "facilities-based residential competition" should require a competitor's ownership and deployment of switches, trunks and some subscriber loops which are being used to serve residential customers. Such a definition promotes sound competitive policy and represents the type of extensive deployment of alternative network facilities envisioned by Congress.

In any event, the number of residential customers being provided service by competitors is so small that it is clearly inconsequential and there is no meaningful competition in Michigan. The data filed by Ameritech Michigan with the MPSC indicates that only 3,612 residential customers are being served by competing local exchange carriers. (Ameritech Michigan's response to Attachment A in MPSC Case No. U-11104, November 12, 1996, p. 16). This number is of no consequence when compared to the nine million residents in the State of Michigan and the fact that Ameritech serves over 3.2 million

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[4]Federal Act's Conference Report, p 148.

residential access lines.[5] There is simply no competitor who is providing any meaningful residential service either exclusively over its own facilities or predominantly over its own facilities to justify Ameritech Michigan's claim that it has satisfied Track A of the Federal Act. Ameritech Michigan has not satisfied Track A and its request to be found in compliance with the competitive checklist is premature.

IV. AMERITECH MICHIGAN'S REQUEST FOR INTERLATA RELIEF SHOULD BE REJECTED BECAUSE THE NON-ACCOUNTING SAFEGUARDS TO PREVENT ANTICOMPETITIVE CONDUCT ARE NOT FULLY IN PLACE

A. The FCC Has Recognized That Further Action Is Required To Effectively Implement Section 272(e)(1)

In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 And 272 of the Communications Act Of 1934, as amended, The FCC released Its First Report And Order And Further Notice Of Proposed Rulemaking On December 24, 1996. In this first Report and Order, the FCC recognized the essential interplay between Sections 271 and 272 of the Federal Act. Section 271(d)(3) requires that the FCC determine that a Bell Operating Company is in compliance with the safeguards set forth in Section 272 before granting interLATA relief. Section 271(d)(3) in relevant part states:

> "Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State. The Commission **shall not**

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[5]As a result, Ameritech Michigan still serves over 99.88% of all customers in its local exchanges. While Congress did not impose a metrics test, Congress did envision "meaningful competition" before allowing the RBOCs into the long distance market.

> **approve** the authorization requested in an application submitted under paragraph (1) unless it finds that--
>
> * * *
>
> (B) The requested authorization will be carried out in accordance with the requirements of section 272." (47 USC § 271(d)(3).)

In its first Report and Order regarding the implementation of non-accounting safeguards in Sections 271 and 272, the FCC recognized that before it could make any determination under Section 271 it must determine that the Bell Operating Company has complied with the safeguards imposed by Section 272. The FCC's first Report and Order stated:

> "Under section 271, we must determine, among other things, whether the BOC **has complied** with the safeguards imposed by section 272 and the rules adopted herein." (FCC 96-489, p. 5, emphasis supplied.)

Before the FCC may even approve Ameritech Michigan's application under Section 271, it must make a determination that Ameritech has complied with the safeguards imposed by Section 272 and its implementing rules.

Yet, the FCC rulemaking with respect to Section 272 is incomplete. The FCC has issued a further notice of proposed rulemaking with respect to the information reporting requirements under Section 272(e)(1) of the Federal Act. (47 USC § 272(e)(1).) Such rules are necessary to insure that the Bell Operating Company is fulfilling the requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such services and access to itself or to its affiliates. Id.

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In order to effectively implement Section 272(e)(1), these reporting rules must be in place. The FCC has stated:

> ". . . that specific public disclosure requirements are necessary to implement section 272(e)(1) **effectively**.
>
> * * *
>
> The statute imposes a specific performance standard on the BOCs in section 272(e)(1), and we conclude that, absent Commission action, **the information necessary to detect violations of this requirement will be unavailable** . . .
>
> * * *
>
> **In order to implement section 272(e)(1) effectively, we concluded that the BOCs must make publicly available the intervals within which they provide service to their affiliates.** We concluded that, without this requirement, competitors will not have the information they require to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1)." (Id. Paragraphs 246, 362 and 368.)

Yet, these rules are not even promulgated. In fact, comments are not due on the FCC's proposed rules until February 19, 1997 and reply comments are not due until March 21, 1997. Thus, Ameritech Michigan's application for interLATA relief is premature because the information reporting requirements to allow the FCC to test whether Ameritech Michigan is in compliance with Section 272 are not even promulgated.

B. Approval Without Fully Implementing Section 272(e)(1) Is Ill-Advised Because Ameritech Michigan Has Repeatedly Demonstrated Its Willingness To Engage In Anticompetitive Conduct And Flout The Protections Set Forth In The MTA

The public interest requires that, first the FCC promulgate all the rules regarding non-accounting safeguards so that it may test Ameritech Michigan's compliance with those safeguards before allowing Ameritech Michigan into the in-region interLATA market. After all, Ameritech Michigan has repeatedly violated provisions of the MTA and has engaged in anticompetitive conduct even in the face of statutory prohibitions and MPSC orders. Ameritech Michigan's conduct can only be expected to be even more abusive and anticompetitive if the FCC does not first fully implement all the informational reporting requirements and then test Ameritech Michigan's compliance with the Section 272 safeguards before allowing it into the in-region interLATA market.

For limited example, despite Section 308 of the MTA[6] which requires Ameritech Michigan to report all transactions with affiliates, Ameritech Michigan totally failed to report any transactions with its affiliates Ameritech Communications, Inc. ("ACI") and Ameritech NewMedia. Pursuant to a Freedom of Information Act request, MCTA asked the MPSC to produce all notices of Ameritech Michigan relating "to transfers, in whole or in part, of substantial assets, functions or employees associated with basic local exchange service to an affiliated entity." (See Exhibit 6.) In response to this Freedom of Information Act request,

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[6]MCL 484.2308; MSA 22.1469(308).

this Commission was able to produce only three instances where Ameritech Michigan provided notice. (See Exhibit 7.) These instances only included:

1. A letter dated August 5, 1993 announcing the roll-out of Ameritech's business units;

2. A letter dated March 16, 1994 from Ameritech relating to a transfer of employees in its real estate division; and

3. December 13, 1994 filing with respect to Ameritech Michigan's request to transfer certain records outside the State of Michigan.

Thus, Ameritech Michigan has only on rare occasions informed the MPSC of its transactions with affiliated entities.

This past limited reporting is cause for significant concern. With respect to ACI, the affiliate which will be providing in-region interLATA service, Ameritech never reported a $90 million loan which was not reduced to writing and has no payment schedule. (Testimony of Patrick J. Earley, VP of Finance for ACI, MPSC Case No. U-111053, 4 Tr 455-456, Exhibit 8.) In fact, ACI readily admitted that it may share staff with Ameritech. (Direct Testimony of Ryan Julian, Director-Extended Affairs for ACI, MPSC Case No. U-11053, 4 Tr 560-61, Exhibit 9.) Ameritech Michigan has acknowledged that ACI currently has over 484 employees. (Ameritech Michigan's FCC Compliance Brief, p 41.) If any of these employees were transferred from Ameritech, then reporting to the MPSC was required under Section 308 of the MTA.

Ameritech Michigan also has wholly failed to report the use of its vehicles and equipment in installing a cable television system for its affiliate, Ameritech NewMedia. As